

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

LORENZO HOWARD	§	
v.	§	CIVIL ACTION NO. 6:06cv446 (Crim. No. 6:03cr16)
UNITED STATES OF AMERICA	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND GRANTING MOVANT'S MOTION TO VACATE OR CORRECT SENTENCE

The Movant Lorenzo Howard filed this motion to vacate or correct sentence under 28 U.S.C. §2255. This Court referred the case to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

I. Background

Howard received a sentence of 131 years in prison on charges including a RICO conspiracy, a drug distribution conspiracy and substantive distribution counts, violent crimes in aid of racketeering, use or carrying of firearms during and in relation to crimes of violence and drug trafficking crimes, possession of an illegal firearm, witness tampering, and being a felon in possession of a firearm. After his conviction and sentence were affirmed on direct appeal, Howard filed a motion to vacate sentence, which the district court denied. This denial was likewise upheld on appeal.

On July 29, 2016, Howard, now represented by counsel, filed his first agreed motion to set aside the verdict. This motion was withdrawn and a second agreed motion, to reopen the case and vacate the judgment, was filed on August 16, 2016.

In the second agreed motion to reopen, Howard asks that his §2255 proceeding be reopened, his sentence set aside, and that he be given a re-sentencing hearing. He states that the Government does not oppose this motion and that the Government has agreed to withdraw its previously filed opposition to the motion to vacate.

II. The Magistrate Judge's Report

After review of the pleadings, the Magistrate Judge issued a Report recommending that the unopposed motion to vacate or correct sentence and the movant Lorenzo Howard be re-sentenced. No objections to this Report have been filed; accordingly, the parties are barred from *de novo* review by the District Judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Services Automobile Association*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has examined the pleadings in this cause and the Report of the Magistrate Judge and has concluded that this Report is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law."). It is accordingly

ORDERED that the Report of the Magistrate Judge is **ADOPTED** as the opinion of the District Court. It is further

ORDERED that the above-styled motion to vacate or correct sentence, and the Movant's criminal case, are **REOPENED** and placed on the active docket of the Court. It is further

ORDERED that the Movant's motion to vacate or correct sentence is **GRANTED** and the sentence imposed upon the Movant Lorenzo Howard is **SET ASIDE**. Re-sentencing shall be scheduled as soon as the business of the Court permits. A new judgment shall be issued in the Movant's criminal case upon re-sentencing.

So **ORDERED** and **SIGNED** this **14** day of **September, 2016**.

A handwritten signature in black ink, appearing to read "Ron Clark", written in a cursive style.

Ron Clark, United States District Judge